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August 4, 2008

VIA FACSIMILE ONLY 212-805-7928

Honorable Michael H. Dolinger  
United States Magistrate Judge  
United States District Court  
For the Southern District of New York  
500 Pearl Street, Room 1670  
New York, NY 10007-1312

ENCLOSURE ORDER  
By the Court: The August 14, 2008 plaintiff is to document his effort to comply with Fed. R. Civ. P. 4(f) by utilizing all available means to serve the defendants. Plaintiff will not be given a blank check (or calendar) to accomplish service.  
8/7/08

Re: Hayes v. Harmony Gold Mining Co., Ltd., et. al. 08-cv-3653

Dear Judge Dolinger:

I am Liaison Counsel for Plaintiff James Hayes and proposed Liaison Counsel for the putative Class in the above referenced matter. Pending before Your Honor is an unopposed motion for Lead Plaintiff filed by Plaintiff Hayes pursuant to the Private Securities Litigation Act (PSLRA). Plaintiff writes, however, to advise the Court on the status of the service of process of each of the Defendants in light of the Court's June 25, 2008 correspondence to Plaintiff's counsel regarding the necessity of service of process by August 14, 2008. (See a copy of this letter attached hereto as Exhibit "A").

Plaintiff would like to advise the Court that none of the individual named Defendants listed in the Complaint is a United States citizen or resident, and the named corporate Defendant is a foreign corporation. Upon information and belief, all of the Defendants are located in the country of South Africa. As a result, Plaintiff submits that, pursuant to FRCP 4(m), the 120 days to serve the Complaint on all of the Defendants does not apply. Plaintiff therefore respectfully requests that in the event the appropriate affidavits of service are not filed by August 14, 2008, the Court take no action in dismissing the matter without prejudice pursuant to FRCP 4.

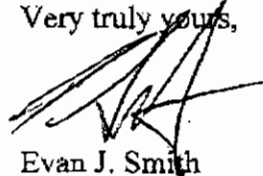
August 4, 2008  
Judge Dollinger  
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With respect to the attempts at service of process, Plaintiff Hayes has made several attempts to effectuate service upon the Defendants' agents located in the United States, to no avail. Specifically, On May 28, 2008, papers were attempted to be served upon the Defendants at the Bank of New York Mellon- ADR Division. This attempt was unsuccessful as the Bank did not accept the papers. However, a second attempt was made at the Bank of New York Mellon – ADR Division on July 3, 2008. While papers were accepted, we subsequently received written communication from the Bank's counsel that they were not authorized to accept service on behalf of the three Defendants. (See copy of affidavit of service attached hereto as Exhibit "B," and a copy of correspondence from Bank declining authorization to accept service attached hereto as Exhibit "C"). Plaintiff Hayes again attempted service of process on Donald Pulglisi at Pulglisi & Associates in Newark, Delaware on July 17, 2008. (See a copy of affidavit of service attached hereto as Exhibit "D"). While the affidavits of service attached indicate service of process upon the Defendants, Defendants' United States counsel, Hogan & Hartson, have advised that they would object to said service of process.

Consequently, on July 31, 2008, Plaintiff Hayes sent waivers of service of process to the Defendants in South Africa and copied their counsel here in the United States. In the event they do not return the waivers of service within the prescribed 60 days (October 1, 2008), Plaintiff Hayes will then attempt service of process through letters rogatory. Our international service of process provider has advised us that this process could take as much as 8 months to complete.

Should the Court have any questions regarding the above issues, counsel remain available at the Court's convenience telephonically or in person. Thank you for your attention to this matter.

Very truly yours,



Evan J. Smith

EJS/jf

Enclosures

cc: Seamus Kaskela, Esquire (via facsimile only)  
Mark Gately, Esquire (via facsimile only)